



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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June 10th, 1998

Minutes of the June 10th, 1998, meeting of the Commission on Governmental Ethics and Election Practices held in Room 122, State Office Building, Augusta, Maine.

Present: Chairman Peter B. Webster; Members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, and Merle R. Nelson; Director William C. Hain, III; Counsel Phyllis Gardiner; and Lobbyist Registrar Annette Jones.

Chairman Webster called the meeting to order at 9: 10 a.m.

The minutes of the May 13th, 1998, meeting were approved subject to the following changes: on page 1, the paragraph that addresses a change to the minutes of the April 8th, 1998, meeting should reflect that the Commission voted to go out of executive session and ratified its vote on agenda item #8; and on page 3, the first sentence in paragraph 5 should be changed to read: "Counsel Gardiner suggested that the stakeholder meetings were, in effect, 'brainstorming' sessions." On motion by Judge Henry, seconded by Mr. Mackenzie, the minutes were approved as amended.

Thereafter followed a discussion of the May 1998 draft rules for implementation of the Maine Clean Election Act and the formal rule-making schedule. Commission Members agreed that any revisions of the draft language that may be necessitated by discussions during this meeting should be incorporated by the Director and reviewed and approved by the Chairman for submission to the Secretary of State with the Notice of Rule-Making Proposal.

The Director announced the proposed rulemaking schedule henceforth as:
June 16th, 1998 - submission of Notice of Rule-Making Proposal to Secretary of State;
June 24th, 1998 – newspaper publication in accordance with Maine Administrative Procedure Act requirements;
July 13th-24th, 1998 - public hearings;
August 28th, 1998 - close of written public comment period;
September 9th, 1998 - draft revision of proposed rule with incorporation of results of public hearings and written public comments for Commission consideration and approval;
October 14, 1998 - final adoption of proposed rule by Commission and referral to Attorney General and final submission to Secretary of State;
November 3, 1998 - target date for effective date of rule.

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The Director then led a review of the substance of the Maine Clean Election Act and the latest draft of the rule implementing the Act. He noted that two issues raised considerable concern, that is, the issues of the impact of campaign equipment retained from one campaign to another and the verification of qualifying contributions by participating candidates. Included in the review were:

- discussion of when an individual becomes a "candidate;"
- seed money contributions;
- qualifying contributions;
- qualification requirements to be a MCEA candidate;
- certification requirements;
- contributors/expenditure restrictions;
- establishment of the MCEA Fund;
- fund distributions timing and amounts;
- matching funds;
- handling insufficient funds;
- appeals and violations.

Judge Henry asked for clarification of how the MCEA Fund distribution amount would be determined in a situation where a MCEA candidate had been preceded by an uncontested candidate in the preceding two elections. The Commission was advised that it will determine the amount of funds to be distributed to participating candidates based on the type of election (i.e., contested or uncontested and primary or general) and office (i.e., Governor, Senator, or Representative) as required by § 1 125(8) of the Act.

Mrs. Nelson sought clarification of the issue regarding who will address the determination of matching funds. Counsel Gardiner advised that the interpretation of the statute is the Commission's responsibility with its interpretation embodied in the implementing rule, which may be subject to challenge.

In response to Judge Henry's inquiry about the penalty for withdrawal by a MCEA certified candidate during the election, the Commission was advised that there is a substantial (i.e., up to \$10,000) civil penalty for violation of any provision of the MCEA. A willful or knowing violation of the Act or its implementing rules also is a Class E (misdemeanor) crime.

Using the MCEA Issues (June 10th, 1998) document as the focal point, the Commission then discussed the issues of the Act that remained to be addressed. The issue of the extensiveness of definitions in the file was discussed.

Options included:

- (1) Omit any term already defined in the Act;
- (2) Define all terms of art fully, even if already defined in the Act, using the Act's definition as appropriate;
- (3) List all terms of art, but where defined in the Act, make reference to that source in the rule;



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- (4) Omit definitions from the rule and include all terms of art and their definitions in informational explanatory materials to be prepared by Commission Staff for public guidance; and
- (5) Include ten-as of art and their definitions in an appendix to the rule.

Discussion of the options by Members, Staff, and public participants ensued. The Chair asked for confirmation by Members that the Commission's consensus was to affirm using the definitions as provided in the May draft. [Note: After the meeting and further discussion with the Administrative Procedure Office, and with the concurrence of the Chairman, the May draft language was revised to omit specific statutory references to avoid obsolescence of the rule that may be caused by future revision of any referenced statutory citation.]

Regarding the distinction between "campaign debt" and "campaign deficit," after brief discussion the consensus of the Commission was to change the reference from campaign "debt" to "deficit" to maintain consistency with the use of that term elsewhere in the campaign financing statutes.

Considerable discussion followed on the impact of seed money limitations on existing campaign equipment based on the inclusion of such items within the definition of the term "contribution." The Commission's consensus was to adopt the proposed revised language on total seed money contributions that includes an allowance for campaign equipment (striking reference to "used" therein), but revised to provide an additional allowance for a suitable computer for use in the candidate's campaigns. The candidate would be responsible for estimating the fair market value of campaign equipment and of a "suitable" computer. With the adoption of revised language in paragraph B (Total Amount), paragraph D (Used Campaign Equipment) would be omitted.

The Chairman announced a 5 minute recess at 11:10 a.m.

Regarding the provision for a case-by-case exemption in rule 3.31, the Commission's consensus was to affirm that the Act gives the Commission authority to approve individual exceptions for technical failures to comply with the qualification requirements for certification, provided that the failure to comply is inadvertent and timely corrected upon discovery.

With respect to the issue of what verification should be required for validating qualifying contributions, and by whom, after considerable discussion the Commission's consensus was to provide maximum flexibility in the interest of encouraging participation in the Act by retaining the option of verification of registered voters by the Town Registrar or, at the Registrar's election, to provide a certified list of registered voters and authorize the candidate to "self-verify" the qualification of contributors based on that list.

The issue of campaign-related expenses will be dealt with separately in the form of "guidelines" to be developed by the Commission and published as part of public informational materials apart from the formal rulemaking process.



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Concerning the use of the term "shall" regarding the Commission's actions; the Commission authorized the change Of Such references to "will" to more accurately reflect the Commission's intentions rather than appearing to be directing itself to do a particular thing.

The threshold requirements for triggering the filing of a "48-hour report" were discussed. The Commission's consensus was to set the single expenditure amounts at \$500 for House candidates, \$750 for Senate candidates and \$1,000 for gubernatorial candidates.

The definition of "expressly advocate" was briefly addressed, and the definition included in the draft rule was confirmed as consistent with the definition of that term approved by the controlling 1st Circuit Court of Appeals case. The approved definition will be retained and reflects the "bright line" test, omitting the so-called "reasonable person" test.

Scheduling for the public hearings was discussed and the following schedule, location and Member attendees were agreed upon: July 13th, 1998 (1:30 p.m.) -- Augusta -- All Members; July 16th, 1998 (1:30 p.m.) -- Portland -- Chairman Webster and Mrs. Nelson; July 22nd, 1998 (9:30a.m.) -- Bangor -- Mr. Mackenzie and Mrs. Cronkhite. Counsel Gardiner expects to attend the Augusta hearing and Director Hain will attend and moderate all hearings.

Chairman Webster, on behalf of the Commission, thanked Attorney Karin Tilberg (rule drafter) and Ms. Anne Schink (stakeholder meeting facilitator) for their valuable services in support of the Commission's rulemaking responsibility.

The Commission then took up agenda item #3. Director Hain informed the Members that on June 1st, 1998, he submitted an amended Regulatory Agenda for 1997 and a new Regulatory Agenda for 1998 to the Executive Director of the Legislative Council as required by the Administrative Procedure Act. The Commission is now in full compliance with those requirements.

Agenda item #4: Director Hain informed the Commission that Mr. James Dowe, Cochairman of Maine Citizens for Access, Safety and Independence PAC requested an opportunity to address the Commission concerning the Commission's decision at the May meeting to refer the PAC's late filing cases to the Attorney General's Office for appropriate action. That matter will be placed on the July meeting agenda and Mr. Dowe will be so informed.

Agenda Item #5:

The minutes of the December 17th, 1997, Commission meeting reflect that the Commission had determined that a "press release" is not a "news release" for the purpose of excluding it from the requirement for attribution of its financing source. The Commission affirmed that determination and decided that no further action was warranted on the issue raised regarding the Ricci campaign press release.

Agenda Item #6:

Chairman Webster briefed the Commission regarding the decision in the case of National Right to Life v. Peter B. Webster et al. that resulted in an award of attorney fees in the amount of

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\$18,893.73 to the plaintiff. The original amount sought was \$50,369.52, reduced to \$47,327.68 by amended petition. Chairman Webster announced his decision not to appeal the court's decision after reviewing the matter and discussing it with the Attorney General's office. The State's Risk Management Division (i.e., State's self-insurance carrier) will pay the award on behalf of the Commission, less a \$1,000.00 deductible already paid from Commission funds.

Agenda Item #7:

Director Hain and Mr. Mackenzie informed the Commission that they are still in the exploratory stages in the electronic filing project, with supplemental information expected this month from the Center for Responsive Politics. No further progress is anticipated until that information can be reviewed and discussed with the State Bureau of Information Services Staff.

Agenda Item #8:

Mr. Davies' and Mr. Doyle's request to address the Commission on the subject of proposed legislation will be indefinitely deferred pending receipt from them of a formal, written proposal for the Commission's consideration.

Agenda Item #9:

Consideration of Senate President Lawrence's letter will be deferred, with his acquiescence, until the July meeting and he will be so informed.

On motion by Mr. Mackenzie and seconded by Mrs. Nelson, the Commission adjourned at 12:15 p.m.